

REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed April 19, 2006. Upon entry of the amendments in this response, claims 1 – 47 remain pending. In particular, Applicants have amended claims 1 – 3, 6 – 7, 9, 14 – 16, 21, 25, 29, 34, 36, 38, 40, 42, 44 – 45, and 47. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

I. General Remarks

Applicants appreciate the detailed remarks provided in the “Response to Arguments” section in the pending Office Action. Although Applicants strongly disagree with the conclusions reached, the comments were helpful in assisting the Applicants provide the substantial amendments made herein. These amendments are made solely in an effort to advance prosecution and are believed to place the pending claims in condition for allowance.

II. Claims 1 – 47 are Patentable Over *Majeti* in View of *Kawashima* in View of *Goode*

The Office Action rejects claims 1 - 47 under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 5,534,913 to Majeti (“*Majeti*”) in view of U.S. Patent No. 5,181,911 to Kawashima (“*Kawashima*”) and further in view of U.S. Patent No. 6,163,272 to Goode (“*Goode*”). For the reasons set forth below, Applicants respectfully traverse the rejection.

Independent Claim 1

Independent claim 1, as amended, recites:

1. In a cable data delivery network for delivering digital data to a host location upon a subscriber initiated request, an apparatus for authenticating that the subscriber is authorized to use said network, said apparatus comprising:

a network manager including at least one database of authorized users and authorized unique identifiers for each of a plurality of authorized data communication devices and a validation agent, said validation agent further comprising:

logic to authorize the subscriber to access a first communications path by comparing first subscriber authentication information received from a data communication device associated with the host location with at least part of the at least one database comprising the authorized users, the first communications path providing at least a portion of connectivity between the host location and a head end of the cable data delivery network; and

logic to authorize the subscriber to access a second communications path, responsive to the first communications path authorization, by comparing a unique identifier of the data communication device that is received from the data communication device with at least part of the at least one database comprising the authorized unique identifiers for each of the plurality of data communication devices, the second communications path providing at least a portion of connectivity between the host location and the head end of the cable data delivery network.

(*Emphasis Added*). Applicants respectfully submit that claim 1 patently defines over the proposed combination of *Majeti*, *Kawashima*, and *Goode* for at least the reason that the proposed combination fails to disclose, teach or suggest the features emphasized in bold text above.

MPEP §2143.03.

For example, neither *Majeti*, *Kawashima*, nor *Goode* discloses, teaches or suggests the feature of “***logic to authorize the subscriber to access a second communications path, responsive to the first communications path authorization, by comparing a unique identifier with at least part of the at least one database comprising the authorized unique identifiers for each of the plurality of data communication devices***” as recited in independent claim 1.

Unlike claim 1, *Majeti* does not disclose any kind of authorization to access a second communication path based on “a unique identifier of the data communication device that is received from the data communication device.” As discussed in prior communications, *Majeti* apparently discloses only a single authorization sequence. For example, *Majeti* discloses that “the ETHERNET interface is also used to carry users’ messages to the processor, during session establishment (login) and tear down (logoff),” (col. 6, lines 15 – 17) and that “the database 96

contains system configuration data, equipment information, network addresses, session records, subscribers' information, ESP information, authentication keys, and routing information.” (Col. 6, lines 17 – 20). This is apparently the sum total of the alleged authorization mechanism of *Majeti*.

However, the Office Action alleges that *Goode* “provides a second authentication process where the user, if not authorized to access a specific portion of connectivity (restricted movie), must provide subscriber authentication information in the form a PIN in order to be authorized to used [sic] the second communications path (the path required to receive the movie).” (Office Action, pg. 5).

Applicants have amended claim 1 to clarify that the second authentication process to access a second communication path, which is “responsive to the first communications path authorization,” is based on “a unique identifier of the data communication device that is received from the data communication device.” However, the alleged “PIN” of *Goode* is not “a unique identifier of the data communication device that is received from the data communication device.” Rather the PIN is “a personal identification number assigned to “various customers.” (Col. 2, line 1).

Furthermore, Applicants reiterate that authorizing access to “a second communications path” as recited in claim 1 is not the same as authorizing “access to the requested service” (col. 6, line 55 – 56), such as a “restricted movie,” to be delivered using the path as alleged.

Goode discloses, at most, that:

At step 226, the routine assigns a PIN to the terminal. This ***PIN allows access to a subset of the services provided by the information distribution system.*** At step 228, the services that are accessible using the default PIN are defined as default parameters. These default parameters may include ***content restrictions that do not allow access to movies exceeding a certain MPAA rating***

or restrict access to movies in a certain genre, e.g., adult movies. Additionally, access may be limited to only children's programs, viewing at only a specific time of day, and to a limited amount that can be spent on services over some arbitrary period of time, e.g., day, month, and the like.

(*Emphasis added*, col. 5, lines 21 – 23). Accordingly, even assuming, *arguendo*, that *Goode* discloses “authorization,” the only access provided via such authorization is to “services,” and not to a “communications path” as recited in claim 1.

In addition, *Kawashima* does not disclose, teach, or suggest (and the Office Action does not allege *Kawashima* discloses, teaches, or suggests) any type of authentication mechanisms as part of the described system.

Accordingly, claim 1 is allowable for at least the reason that neither *Majeti*, *Kawashima*, nor *Goode* discloses, teaches or suggests “logic to authorize the subscriber to access a second communications path” as recited in independent claim 1.

For at least these reasons, Applicants submit that independent claim 1 is allowable over the proposed combination of *Majeti*, *Kawashima*, and *Goode*. Furthermore, because claim 1 is believed to be allowable, dependent claims 2-13, 33-34, and 43 are allowable for at least the same reasons.

Independent Claim 14

Independent claim 14, as amended, recites:

14. A method of authorizing a subscriber to access a first communications path and a second communications path, the first communications path and the second communications path utilized in conveying data between a head end of a cable data delivery network and a data communication device associated with the subscriber of a the cable data delivery network, the method comprising the steps of:

authorizing the subscriber to access the first communications path by comparing first subscriber authentication information received from the data communication device with at least part of at least one database of authorized users, the first communications path providing at least a portion of connectivity

between the data communication device and the head end of the cable data delivery network; and

authorizing the subscriber to access the second communications path, responsive to the first communications path authorization, by comparing a unique identifier of the data communication device that is received from the data communication device with at least part of the at least one database that further includes authorized unique identifiers for each of a plurality of authorized data communication devices, the second communications path providing at least a portion of connectivity between the data communication device and the head end of the cable data delivery network.

(*Emphasis Added*). Applicants respectfully submit that claim 14 patently defines over the proposed combination of *Majeti*, *Kawashima*, and *Goode* for at least the reason that the proposed combination fails to disclose, teach or suggest the features emphasized in bold text above.

MPEP §2143.03.

For example, neither *Majeti*, *Kawashima*, nor *Goode* discloses, teaches or suggests the feature of “***authorizing the subscriber to access the second communications path, responsive to the first communications path authorization, by comparing a unique identifier of the data communication device that is received from the data communication device with at least part of the at least one database that further includes authorized unique identifiers for each of a plurality of authorized data communication devices***” as recited in independent claim 14.

Unlike claim 14, *Majeti* does not disclose any kind of authorization to access a second communication path based on “a unique identifier of the data communication device that is received from the data communication device.” As discussed in prior communications, *Majeti* apparently discloses only a single authorization sequence. For example, *Majeti* discloses that “the ETHERNET interface is also used to carry users’ messages to the processor, during session establishment (login) and tear down (logoff),” (col. 6, lines 15 – 17) and that “the database 96 contains system configuration data, equipment information, network addresses, session records,

subscribers' information, ESP information, authentication keys, and routing information.” (Col. 6, lines 17 – 20). This is apparently the sum total of the alleged authorization mechanism of *Majeti*.

However, the Office Action alleges that *Goode* “provides a second authentication process where the user, if not authorized to access a specific portion of connectivity (restricted movie), must provide subscriber authentication information in the form a PIN in order to be authorized to used [sic] the second communications path (the path required to receive the movie).” (Office Action, pg. 5).

Applicants have amended claim 14 to clarify that the second authentication process to access a second communication path, which is “responsive to the first communications path authorization,” is based on “a unique identifier of the data communication device that is received from the data communication device.” However, the alleged “PIN” of *Goode* is not “a unique identifier of the data communication device that is received from the data communication device.” Rather the PIN is “a personal identification number assigned to “various customers.” (Col. 2, line 1).

Furthermore, Applicants reiterate that authorizing access to “a second communications path” as recited in claim 14 is not the same as authorizing “access to the requested service” (col. 6, line 55 – 56), such as a “restricted movie,” to be delivered using the path as alleged.

Goode discloses, at most, that:

At step 226, the routine assigns a PIN to the terminal. This ***PIN allows access to a subset of the services provided by the information distribution system.*** At step 228, the services that are accessible using the default PIN are defined as default parameters. These default parameters may include ***content restrictions that do not allow access to movies exceeding a certain MPAA rating or restrict access to movies in a certain genre, e.g., adult movies.*** Additionally, access may be limited to only children's programs, viewing at only a specific time

of day, and to a limited amount that can be spent on services over some arbitrary period of time, e.g., day, month, and the like.

(*Emphasis added*, col. 5, lines 21 – 23). Accordingly, even assuming, *arguendo*, that *Goode* discloses “authorization,” the only access provided via such authorization is to “services,” and not to a “communications path” as recited in claim 14.

In addition, *Kawashima* does not disclose, teach, or suggest (and the Office Action does not allege *Kawashima* discloses, teaches, or suggests) any type of authentication mechanisms as part of the described system.

Accordingly, claim 14 is allowable for at least the reason that neither *Majeti*, *Kawashima*, nor *Goode* discloses, teaches or suggests “logic to authorize the subscriber to access a second communications path” as recited in independent claim 14.

For at least these reasons, Applicants submit that independent claim 14 is allowable over the proposed combination of *Majeti*, *Kawashima*, and *Goode*. Furthermore, because claim 14 is believed to be allowable, dependent claims 15-20, 35-36, and 44 are allowable for at least the same reasons.

Independent Claim 21

Independent claim 21 recites:

21. An apparatus utilized in authorizing a subscriber to access a cable data network at a first level of service and a second level of service, the cable data network providing connectivity between a head end and the subscriber, comprising:

logic configured to authorize the subscriber to access the cable data network at the first level of service by comparing first subscriber authentication information with at least part of at least one database; and

logic configured to authorize the subscriber to access the cable data network at the second level of service responsive to the first level of service authorization by comparing second subscriber authentication information with at least part of the at least one database.

(*Emphasis Added*). Applicants respectfully submit that claim 21 patently defines over the proposed combination of *Majeti*, *Kawashima*, and *Goode* for at least the reason that the proposed combination fails to disclose, teach or suggest the features emphasized in bold text above.

MPEP §2143.03.

Claim 21 is patentable over the proposed combination of *Majeti*, *Kawashima*, and *Goode* for at least the reason that neither *Majeti*, *Kawashima*, nor *Goode* discloses, teaches or suggests the feature of “logic configured to authorize the subscriber to access the cable data network at the second level of service ***responsive to*** the first level of service authorization” as recited in independent claim 21.

Applicants have reviewed each of *Majeti*, *Kawashima*, and *Goode*, and fail to find that any of the alleged authorizations are performed having a second authorization that is “responsive to” the first authorization. Rather, even assuming, *arguendo*, that *Majeti*, *Kawashima*, or *Goode* disclose any of the claimed authorizations as alleged, such authorizations are performed independently.

The Office Action alleges that “the examiner provided *Goode*, which teaches multiple levels of authentication information (which specifies which level of authentication should be provided).” (Office Action, pg. 3). However, again, even assuming, *arguendo*, that *Goode* discloses “multiple levels of authentication” as alleged, *Goode* does not disclose “***logic configured to authorize the subscriber to access the cable data network at the second level of service responsive to the first level of service authorization by comparing second subscriber authentication information with at least part of the at least one database***” as recited in independent claim 21.

Accordingly, neither *Majeti*, *Kawashima*, nor *Goode* disclose, individually or in combination, more than one authorization to access the cable data network, and there is no apparent suggestion that a feature of one authorization being “responsive to” a second authorization would be obvious to one skilled in the art. Accordingly, even if combined, the references can not be said to disclose, teach, or suggest the feature of “logic configured to authorize the subscriber to access the cable data network at the second level of service responsive to the first level of service authorization by comparing second subscriber authentication information with at least part of the at least one database” as recited in independent claim 21.

For at least these reasons, Applicants submit that independent claim 21 is allowable over the proposed combination of *Majeti*, *Kawashima*, and *Goode*. Furthermore, because claim 21 is believed to be allowable, dependent claims 22-24, 37-38, and 45 are allowable for at least the same reasons.

Independent Claim 25

Independent claim 25, as amended, recites:

25. A method of authorizing a subscriber to access a cable data network at a first level of service and a second level of service, the cable data network providing connectivity between a head end and a data communication device associated with the subscriber, the method comprising the steps of:

authorizing the subscriber to access the cable data network at the first level of service by comparing first subscriber authentication information received from the data communication device with at least part of at least one database; and

authorizing the subscriber to access the cable data network at the second level of service, responsive to the first level of service authorization, by comparing a unique identifier of the data communication device that is received from the data communication device with at least part of the at least one database that further includes authorized unique identifiers for each of a plurality of authorized data communication devices.

(*Emphasis Added*). Applicants respectfully submit that claim 25 patently defines over the proposed combination of *Majeti*, *Kawashima*, and *Goode* for at least the reason that the proposed

combination fails to disclose, teach or suggest the features emphasized in bold text above.

MPEP §2143.03.

Claim 25 is patentable over the proposed combination of *Majeti*, *Kawashima*, and *Goode* for at least the reason that neither *Majeti*, *Kawashima*, nor *Goode* discloses, teaches or suggests the feature of “authorizing the subscriber to access the cable data network at the second level of service, ***responsive to the first level of service authorization***, by comparing a unique identifier of the data communication device that is received from the data communication device with at least part of the at least one database that further includes authorized unique identifiers for each of a plurality of authorized data communication devices” as recited in independent claim 25.

Applicants have reviewed each of *Majeti*, *Kawashima*, and *Goode*, and fail to find that any of the alleged authorizations are performed having a second authorization that is “responsive to” the first authorization. Rather, even assuming, *arguendo*, that *Majeti*, *Kawashima*, or *Goode* disclose any of the claimed authorizations as alleged, such authorizations are performed independently.

The Office Action alleges that “the examiner provided *Goode*, which teaches multiple levels of authentication information (which specifies which level of authentication should be provided).” (Office Action, pg. 3). However, again, even assuming, *arguendo*, that *Goode* discloses “multiple levels of authentication” as alleged, *Goode* does not disclose “authorizing the subscriber to access the cable data network at the second level of service, ***responsive to the first level of service authorization, by comparing a unique identifier of the data communication device that is received from the data communication device with at least part of the at least one database that further includes authorized unique identifiers for each of a plurality of authorized data communication devices***” as recited in independent claim 25.

Accordingly, neither *Majeti*, *Kawashima*, nor *Goode* disclose, individually or in combination, more than one authorization to access the cable data network, and there is no apparent suggestion that a feature of one authorization being “responsive to” a second authorization would be obvious to one skilled in the art. Accordingly, even if combined, the references can not be said to disclose, teach, or suggest the feature of “authorizing the subscriber to access the cable data network at the second level of service responsive to the first level of service authorization” as recited in independent claim 25.

For at least these reasons, Applicants submit that independent claim 25 is allowable over the proposed combination of *Majeti*, *Kawashima*, and *Goode*. Furthermore, because claim 25 is believed to be allowable, dependent claims 26-28, 39-40, and 46 are allowable for at least the same reasons.

Independent Claim 29

Independent claim 29, as amended, recites:

29. A method of logging into a cable data network that has a plurality of levels of service, the method comprising the steps of:

logging into the cable data network at a first level of service by sending first subscriber authentication information from a data communication device associated with a subscriber to at least one validation agent configured to compare the first subscriber authentication information to at least one database of authorized users in order to authorize the subscriber to log into the network at the first service level; and

logging into the cable data network at a second level of service, responsive to logging into the network at a first level of service, by sending a unique identifier of the data communication device associated with the subscriber to the at least one validation agent, the at least one validation agent further configured to compare the unique identifier of the data communication device to at least one database of authorized unique identifiers for each of a plurality of authorized data communication devices in order to authorize the subscriber to log into the network at the second service level.

(*Emphasis Added*). Applicants respectfully submit that claim 29 patently defines over the proposed combination of *Majeti*, *Kawashima*, and *Goode* for at least the reason that the proposed combination fails to disclose, teach or suggest the features emphasized in bold text above.

MPEP §2143.03.

Claim 29 is patentable over the proposed combination of *Majeti*, *Kawashima*, and *Goode* for at least the reason that neither *Majeti*, *Kawashima*, nor *Goode* discloses, teaches or suggests the feature of “logging into the cable data network at a second level of service, ***responsive to logging into the network at a first level of service***, by sending a unique identifier of the data communication device associated with the subscriber to the at least one validation agent, the at least one validation agent further configured to compare the unique identifier of the data communication device to at least one database of authorized unique identifiers for each of a plurality of authorized data communication devices in order to authorize the subscriber to log into the network at the second service level” as recited in independent claim 29.

Applicants have reviewed each of *Majeti*, *Kawashima*, and *Goode*, and fail to find that any of the references include a first “logging into the cable data network” while also having a second “logging into the cable data network” that is “responsive to” the first. Rather, even assuming, *arguendo*, that *Majeti*, *Kawashima*, or *Goode* disclose any of the claimed steps of “logging into the cable data network” as alleged, such steps are performed independently.

The Office Action alleges that “the examiner provided *Goode*, which teaches multiple levels of authentication information (which specifies which level of authentication should be provided).” (Office Action, pg. 3). However, again, even assuming, *arguendo*, that *Goode* discloses “multiple levels of authentication” as alleged, *Goode* does not disclose “logging into the cable data network at a second level of service, ***responsive to logging into the network at a***

first level of service, by sending a unique identifier of the data communication device associated with the subscriber to the at least one validation agent, the at least one validation agent further configured to compare the unique identifier of the data communication device to at least one database of authorized unique identifiers for each of a plurality of authorized data communication devices in order to authorize the subscriber to log into the network at the second service levels” as recited in independent claim 29.

Accordingly, neither *Majeti*, *Kawashima*, nor *Goode* disclose, individually or in combination, logging into the cable data network at a second level of service “responsive to” logging into the network at a first level of service, nor is there any apparent suggestion that logging into the cable data network at a second level of service “responsive to” logging into the network at a first level of service, would be obvious to one skilled in the art. Accordingly, even if combined, the references can not be said to disclose, teach, or suggest the feature of “logging into the cable data network at a second level of service responsive to logging into the network at a first level of service” as recited in independent claim 29.

For at least these reasons, Applicants submit that independent claim 29 is allowable over the proposed combination of *Kawashima* and *Majeti*. Furthermore, because claim 29 is believed to be allowable, dependent claims 30-32, 41-42, and 47 are allowable for at least the same reasons.

Dependent Claims 2-13, 15-20, 22-24, 26-28, and 30-47

Applicants submit that the §103 rejection to dependent claims 2-13, 15-20, 22-24, 26-28, and 30-47 is rendered moot in light of any of the arguments made above and, therefore, claims 2-13, 15-20, 22-24, 26-28, and 30-47 are allowable as a matter of law for at least the reason that

claims 2-13, 15-20, 22-24, 26-28, and 30-47 contains all the features and element of its corresponding independent claim.

Additionally, with respect to claim 33, Applicants hereby traverse the finding of inherency. Specifically, the Office Action indicates that “if a user is not authorized to use the system, he/she will inherently not be permitted to access the system.” (Office Action, pg. 8).

However, claim 33 (for example) recites that “the data delivery is restrained until authorization is completed.” The finding of inherency apparently assumes that all systems restrain data delivery “until authorization is completed.” However, Applicants submit that, depending on the type of system, some may temporarily allow data delivery until authorization is complete. Accordingly, the finding of inherency is improper. In that the Office Action applies the same rejection to claims 34 – 42, Applicants also traverse the recited inherency of these claims for at least the same reason.

The Office Action indicates that “the examiner notes that the inherency statement made is in relation to the evidence provided by the references used in the rejection itself” and that the “Applicant however, has provided no evidence that such an alternative system exists.” (Office Action, pg. 2). The Office Action concludes that “Applicant’s arguments are not evidence and the examiner notes that the Applicant must provide evidence that such an alternative system exists.” (Office Action, pg. 9).

However, Applicants submit that, according to MPEP § 2112, section IV, “In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (*Emphasis in original*, MPEP § 2112).

Here the reasoning supplied in the Office Action is “The examiner notes that if a user is not authorized to use the system, he/she will inherently not be permitted to access the system.” (Office Action, pg. 9). Applicants submit that the Office Action has not met its burden in providing a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art as required by the MPEP. Rather, the statement supplied in the Office Action is simply a conclusion, apparently made in hindsight, *without* fact and/or reasoning. Accordingly, Applicants continue to traverse the Examiner’s finding of inherency and further, respectfully submit that, until the Examiner provides such fact and/or reasoning, that the Applicant is not required to provide evidence that such an alternative system exists.

Applicants submit that the burden to prove that something necessarily flows from another can be difficult, and that “the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993)”. (*Emphasis in original*, MPEP § 2112).

III. References Made of Record

The references made of record have been considered, but are not believed to affect the patentability of the presently pending claims.

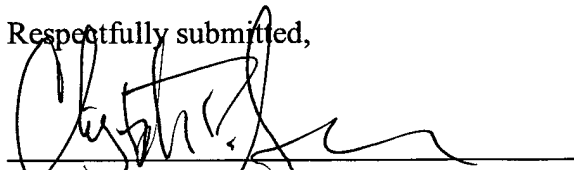
CONCLUSION

The Applicants respectfully submit that all claims are now in condition for allowance, and request that the Examiner pass this case to issuance. If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions.

No fee is believed to be due in connection with this response. If, however, any fee is deemed to be payable, you are hereby authorized to charge any such fee to Deposit Account No. 20-0778.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Christopher D. Guinn', is written over a horizontal line.

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